

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and refers to the privileges and immunities accorded members of the administrative and technical and service staffs of diplomatic missions and consular employees and members of the service staff of consular posts in the United States.

Pursuant to international law, as reflected in the Vienna Conventions on Diplomatic and Consular Relations, it is well established that members of the above listed categories who are ***nationals of or permanently resident in the receiving State*** enjoy privileges and immunities only to the extent admitted by the receiving State. In addition, under these Conventions the receiving, State has the obligation to exercise its jurisdiction over such persons in such a way as not to hinder unduly the performance of the functions of the diplomatic mission and consular post.

This note addresses the definition of the term "permanently resident in" for the purposes of Article 38(2) of the Vienna Diplomatic Convention and Article 71(2) of the Vienna Consular Convention. Until the present time, the United States has, for the sake of its own convenience, equated this term with the status of "permanent resident alien" as the latter expression is

employed in United States immigration law. This has meant that persons have not been considered "permanently resident in" the United States for the purposes of the Vienna Conventions until such time as they achieve (entirely at their own initiative) the legal status of a "permanent resident alien" (i.e., "green card" status).

Upon careful review of the definition of "permanently resident in," including the drafting of the Vienna Conventions, the practice of other States, and the fundamental purposes of the Vienna Conventions, the Department has determined that members of the administrative and technical and service staffs of diplomatic missions and consular employees and members of the service staff of consular posts in the United States ***will be considered permanently resident in the United States for the purposes of the Vienna Conventions unless*** the employing foreign state provides appropriate documentation to indicate that the sending State:

(1) pays the cost of the employee's transportation to the United States from the employee's normal place of residence;

(2) undertakes to transfer the employee and his or her immediate family out of the United States within a specific time frame consistent with the sending State's transfer policy; and

(2) undertakes to pay the cost of the employee's transportation from the United States to the employee's normal place of residence or to the country of the

employee's next assignment at the end of the employee's tour of duty in the United States.

Such documentation may include a copy of the person's contract with the employing foreign state, a copy of the person's travel orders or any other material showing that the above criteria are satisfied.

These standards shall not apply to those missions subject to a bilateral ceiling restricting the number of official employees at the mission.

Members of the administrative and technical and service staffs of diplomatic missions and consular employees and members of the service staff of consular posts who are permanently resident in the United States enjoy no privileges and immunities pursuant to the Vienna Conventions. A list of some of the privileges and immunities that are affected by being permanently resident in the United States is enclosed with this note.

So that the Chiefs of Mission may have an opportunity to review these standards and communicate them to their governments, and to prepare the supporting documentation referred to, the Department will not implement this change until June 15, 1991. Thereafter, all registrations of staff members in these categories will have to be accompanied by such documentation if the person is to be entitled to privileges and immunities pursuant to the Vienna Conventions.

Shortly after June 15, 1991, a listing of embassy and consular staff personnel registered with the Office of

Protocol as of June 15 will be forwarded to the missions. Each mission will be requested to review and update this listing and to provide no later than August 1, 1991, the appropriate documentation for those persons who will **not** be considered "permanently resident in" the United States.

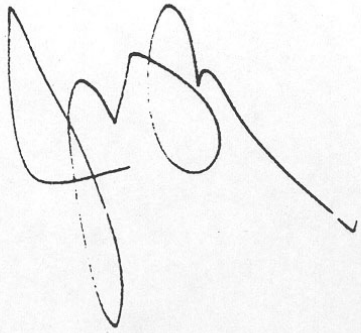
Should any member of the administrative and technical or service staffs of diplomatic missions or any consular employee or member of the service staff of consular posts in the United States wish to settle permanently in the United States upon termination of employment with that mission it is, of course, necessary for the member to obtain the permission of the appropriate U.S. authorities for this purpose in accordance with the laws and regulations of the United States.

The Department wishes to emphasize that **all** persons working at embassies or consulates must be registered with the Office of Protocol, whether or not they are considered to be "permanently resident in" the United States.

Enclosure: List of certain privileges and immunities affected.

Department of State,

Washington, April 10, 1991.

A handwritten signature in black ink, consisting of several loops and a long trailing line, is positioned to the right of the typed text.

PRIVILEGES AND IMMUNITIES THAT MEMBERS OF THE
ADMINISTRATIVE AND TECHNICAL AND SERVICE STAFFS OF
DIPLOMATIC MISSIONS AND CONSULAR EMPLOYEES AND MEMBERS OF
THE SERVICE STAFF OF CONSULAR POSTS WHO ARE PERMANENTLY
RESIDENT IN THE UNITED STATES **DO NOT ENJOY** INCLUDE:

- Immunity from criminal, civil and administrative jurisdiction.
- Inviolability.
- Duty-free importation of goods.
- Registration of motor vehicles through the Office of Foreign Missions.
- Issuance of motor vehicle and drivers licenses from the Office of Foreign Missions.
- Tax exemptions pursuant to Articles 34 and 37 of the Vienna Convention on Diplomatic Relations and Article 49 of the Vienna Convention on Consular Relations.

(Note: Such persons will continue to be eligible for A-2 visas, and their dependents will be entitled to request permission for employment in accordance with existing employment arrangements. In addition, diplomatic missions and consular posts may continue to enjoy certain tax privileges under U.S. law with respect to such persons. Missions and posts and their permanently resident employees may wish to consult with appropriate federal, state or local governmental authorities regarding the possible availability of any tax privileges.)